

## Summary of Commercial Shellfish Laws

2014-2015

**This document should be kept on board all vessels employed for commercial shellfishing as a reference to regulation, not to supersede knowledge of the pertinent laws.**

**License Requirements: [Section 50-5-300, Section 50-5-310, Section 50-5-320, Section 50-5-325, Section 50-5-360, Section 50-5-965]**

	<u>Resident</u>	<u>Non-Resident</u>
Saltwater Commercial License	\$25.00	\$300.00
State Shellfish Grounds License	\$75.00	\$375.00
Hand Held Equipment License	No Charge	No Charge
Drag Dredge License	\$75.00	\$375.00
Other Mechanical Equipment License	\$125.00	\$625.00
Commercial Vessel Decal	No Charge	No Charge
Culture or State Ground Harvest Permit/Decal	No Charge	No Charge
State Ground Harvest Maps	No Charge	No Charge

### **Legal definitions important to shellfishermen include:**

- “Bottoms” are all of the lands within the State covered at mean high water from the freshwater/saltwater dividing line seaward to the seaward most limits of the territorial sea.  
**[Section 50-5-15]**
- “Bull rake” means a rake having a basket and a width greater than twelve inches. **[Section 50-5-15]**
- “Bushel” means one US bushel. **[Section 50-5-15]**
- “Commercial equipment” means:
  - (a) Any trawl, haul seine, gill net, channel net, bull rake, seed fork, grabs, escalator, or dredge; and
  - (b) Any net, seine, trap, pot, tongs, rake, fork, trotline, or other device or appliance when used for taking or attempting to take fish for a commercial purpose. **[Section 50-5-15]**
- “Commercial purpose” means:
  - (a) Being engaged in buying or selling fish;
  - (b) Taking or attempting to take fish in order to derive income or other consideration;
  - (c) Using commercial equipment; and
  - (d) Otherwise being engaged in the fisheries industry with the intent to derive income.  
**[Section 50-5-15]**
- “Culch” means oyster shell or other substrate, which is purposely placed for propagation of oysters through the attachment of oyster larvae. **[Section 50-5-15]**
- “Dredge” means equipment used for harvesting bottom dwelling aquatic life, which is not a trawl and is powered by mechanical means, and is designed to contact the bottom when in operation.  
**[Section 50-5-15]**
- “Fish” means finfish, shellfish including mollusks, scallops, crustaceans, horseshoe crabs, whelks (conchs), turtles, and terrapin or products thereof. **[Section 50-5-15]**

- “Mariculture” means controlled cultivation in confinement of marine and estuarine organisms in salt waters. **[Section 50-5-15]**
- “Mollusk” or “molluscan”, means any member of the phylum Mollusca. **[Section 50-5-15]**
- “Recreational fishermen” means persons taking or attempting to take saltwater fish for recreation only, and not for commercial purposes. **[Section 50-5-15]**
- “Seed fork” means a fork manufactured having seven or more straight or slightly curved tines or having any tine greater than eight inches in length. All tines must be at least one inch apart unless utilized for mariculture harvest. **[Section 50-5-15]**
- “Shellfish” means oysters, clams, mussels, scallops, and all nonmotile molluscan fish having shells. **[Section 50-5-15]**
- “Striker” means a person, other than a licensed saltwater commercial fisherman, who under immediate supervision assists a licensed commercial saltwater fisherman, but does not use separate commercial equipment on a vessel, which is engaged in commercial fishing. **[Section 50-5-15]**

**Notice of opening or closing of commercial fishing season; health and environmental protection.**

In opening or closing the commercial shellfish fishing season, except under its emergency closure authority, the Department shall give at least twenty-four hours notice of any action and shall use all reasonable means to inform the public. **[Section 50-5-35 (A)]**

**Responsibility for determining location of commercial fishing vessel.**

The operator of any vessel engaged in commercial fishing is responsible for accurately determining the location of his vessel in order that he not violate any closed or restricted area. **[Section 50-5-115]**

**Boarding of vessel by law enforcement officers; penalty for failure to allow boarding and to cooperate.**

The operator and crew of any watercraft operating in the state waters are required to heave to when signaled or hailed, and allow boarding, and cooperate with Department personnel, law enforcement officers, or U.S. Coast Guard personnel. **[Section 50-5-120]**

**Commercial equipment licenses and fees; specification of vessel on which used; tagging of equipment; penalties.**

Other than vessels solely transiting the State in interstate commerce, any vessel on or from which commercial shellfish harvest equipment is used or transported must display a current identification decal provided by the Department. **[Section 50-5-325 (F)]**

**Commercial license a condition of permit; exceptions; revocation.**

In order to obtain any commercial shellfish harvest permit, a person must be a licensed commercial saltwater fisherman and hold all other required licenses. **[Section 50-5-345 (A)]**

Any permit granted may be revoked by the Department for a violation of a condition of the permit or of a related conservation law. **[Section 50-5-345 (B)]**

**Display of licenses, permits, and vessel's identification decal; transfer of licenses; penalty.**

While exercising the privilege of a license or permit, the licensee, operator, or permittee must display or keep on his person the license or permit, and the license or permit must be produced on demand of Department personnel or other law enforcement personnel. **[Section 50-3-350 (A)]**

The operator and the owner of a vessel used for commercial purposes must have aboard the required commercial equipment licenses and permits and display the vessel's identification decal provided by the Department. **[Section 50-3-350 (C)]**

**Expiration of licenses and permits.**

Licenses issued for shellfish equipment expire on June 30th following their effective date. Permits expire under the terms of the individual permit. **[Section 50-5-385]**

**Designation and maintenance of Public Shellfish Grounds; areas containing DHEC permitted structure; taking for commercial purpose prohibited.**

The Department designates certain shellfish growing areas for recreational harvest only. It is a violation of the law for a person to take shellfish from such area for a commercial purpose or to sell or attempt to sell shellfish taken from such area. **[Section 50-5-955 (C)]**

**Rules governing recreational shellfish bottom harvests.**

Only properly licensed and permitted commercial fisherman and persons who received properly tagged shellfish from a licensed and certified wholesale seafood dealer may possess more than the daily recreational limits provided in law while on the waters of this State or the adjoining lands. **[Section 50-5-960 (B)]**

**Taking shellfish from bottoms designated for commercial harvest; individual harvester permits; written approvals; penalties.**

A person who takes shellfish commercially or takes more than the recreational limits allowed by law from the bottoms designated for commercial harvest must possess an individual harvesting permit. **[Section 50-5-965 (A)]**

The Department may limit the number of areas on which an individual may harvest commercially under permit. **[Section 50-5-965 (B)]**

People holding Shellfish Culture or Mariculture Permits may allow others to harvest shellfish from bottoms permitted to them. In addition to the required Department permit, in the form of a hard card, harvesters must have a decal from the Shellfish Culture permittee or Shellfish Mariculture permittee for each area. **[Section 50-5-965 (C)]**

No person may take or attempt to take shellfish from state-owned bottoms in quantities greater than that allowed for personal use without having in possession a valid individual commercial harvesting permit granted to him by the Department. **[Section 50-5-965 (D)]**

No person may take or attempt to take shellfish from state-owned bottoms under permit for shellfish culture or mariculture without a valid individual harvester permit granted to him by the Department. **[Section 50-5-965 (E)]**

**Mechanical harvest permits; penalties.**

It is unlawful to take or attempt to take shellfish by mechanically operated devices without a mechanical harvest permit. **[Section 50-5-970]**

**Commercial and personal harvest limited to areas specified on permit; penalties; voluntary surrender of commercial permit.**

A person permitted to harvest shellfish from state- owned bottoms for commercial purposes must harvest, whether for commercial or personal use, from only the areas of state bottoms specified on the permit. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for not more than thirty days. **[Section 50-5-975 (A)]**

Following voluntary surrender of a commercial shellfish harvest permit by a commercial fisherman, the Department must not issue a commercial harvest permit to that person during the remainder of the license year. **[Section 50-5-975 (B)]**

**Erection and maintenance of signs; penalty.**

It is not lawful without approval of the Department to erect or maintain any sign on shellfish bottoms or waters, except Culture or Mariculture Permit holders may erect signs approved by the Department to designate their areas under permit. **[Section 50-5-980]**

**Setting season for taking shellfish; bringing shellfish into State during closed season; night harvests; penalties.**

The Department sets the shellfish season annually. Please contact the Department (843)953-9301 for the shellfish opening and closing dates. It is a violation of the law for a person to take or attempt to take and shellfish during the closed season. **[Section 50-5-985 (A)]**

It is unlawful to take or attempt to take shellfish from any grounds closed by the Department or any other authorized government agency. **[Section 50-5-985 (B)]**

Shellfish imported during the closed season must bear written evidence, such as a bill of landing or other official document from the State of removal, which verifies that the shellfish were lawfully taken from the state. **[Section 50-5-985 (E)]**

It is unlawful to harvest shellfish between one-half hour after sunset as locally published and one-half hour before sunrise as locally published. In the case of bottoms under culture or mariculture permit, harvesting at night is lawful with the written permission of the Department. **[Section 50-5-985 (F)]**

**Size limitations for hard clams of the genus Mercenaria; permits for possession and sale of undersized clams; penalties.**

Except as an activity of mariculture it is unlawful to take or attempt to take, possess, sell, purchase, or import a hard clam less than one inch in thickness as measured from the exterior surface of one shell of the intact clam to the exterior surface of the opposite shell. A person taking a clam of other than legal size must immediately return it to the bottoms from whence it came. **[Section 50-5-990 (A)]**

**Shellfish mariculture operation permits.**

The Department may permit persons and entities engaged in shellfish mariculture operations to take, possess, and sell maricultured shellfish at any time during the year. **[Section 50-5-995]**

**Wholesale seafood dealer prohibited from purchasing from unlicensed fisherman or dealer; maintenance of records; penalties.**

It is unlawful for a wholesale seafood dealer to purchase shellfish from anyone other than a properly licensed and permitted commercial saltwater fisherman or another licensed wholesale seafood dealer. The dealer must maintain a record of all purchases of shellfish handled including the name and address of the person whom purchased, the area where harvested, the type of shellfish purchased, the dates of harvest and purchase, and the commercial saltwater fisherman's license number. The record must be available for inspection by any law enforcement officer or Department personnel for one year after the date of sale. **[Section 50-5-1000 (A)]**

**Unlawful removal of shell; penalty.**

It is unlawful to remove shells from any shell deposit under state jurisdiction without a permit from the Department. **[Section 50-5-1015]**

**Point values for suspension of saltwater privileges; relation to other penalties.**

Under the saltwater commercial violations point system convictions for taking, attempting to take, or possessing shellfish in an unlawful manner, in unlawful or closed areas including areas closed by the Department of Health and Environmental Control, during unlawful hours, or during the closed season for the activity, result in assessment of eight points. **[Section 50-5-2500 (A)(4)]**

**All permits must be obtained through the Permitting Office at the Office of Fisheries Management at 217 Fort Johnson Road, Charleston, SC 29412.**

**\*All fishermen commercially harvesting molluscan shellfish must have harvest tags, please contact SC DHEC Shellfish Sanitation for details.**

If your license/ permit is suspended or revoked, you are entitled to an administrative appeal pursuant to the South Carolina Administrative Procedures Act. The review must be scheduled by the Administrative Law Court in accordance with the division's procedural rules. The scope of the hearing is limited to the issues set out by the Administrative Procedures Act and the division's procedural rules. Appeals must be filed and served within 30 days of suspension/ revocation notice with the Clerk of Court of Administrative Law Court 1205 Pendleton Street Suite 224 Columbia, SC 29201, telephone (803)734-0660.